

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

AXEL RAUL ZAMARRON,

Plaintiff,

v.

No. 1:21-cv-0919 RB/GJF

HERMAN MADRID, SIMON  
RAMIREZ, MARY GALLEGOS,  
ROBIN BOURNE, OSCAR  
CHACON, GEORGE GARCIA, CHRIS  
ROMERO, JR., and DAVID VERRETT,

Defendants.

**ORDER ADOPTING PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on United States Magistrate Judge Gregory J. Fouratt's Proposed Findings and Recommended Disposition (PFRD) filed May 6, 2025. (Doc. 78.) Judge Fouratt examined Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. 75) and recommends granting it in part. (*See* Doc. 78 at 1–2.) Specifically, Judge Fouratt recommends the motion be denied to the extent Defendants seek to dismiss the claim against Defendant Oscar Chacon for failing to reasonably protect Zamarron from violence at the hands of other inmates. (*Id.* at 1.) He further recommends the Court grant the motion and deny without prejudice the claim against Defendant Herman Madrid for failing to reasonably protect Zamarron from violence at the hands of other inmates with leave for Zamarron to amend his complaint on this claim alone. (*See id.* at 1, 39.) Finally, he recommends the Court grant the motion and dismiss the remaining claims with prejudice and without leave to amend. (*See id.* at 1–2, 39.)

The PFRD notified the parties of their ability to file objections no later than 14 days after the PFRD was filed. (*Id.* at 39.) No party filed objections. Zamarron, however, filed a Motion to Amend Claims Against Defendant(s) Madrid (Doc. 79) and a Motion to Answer Prayer Relief (Doc. 80). In the Motion to Answer Prayer Relief, Zamarron seeks “a final disposition against

Defendant(s) in this case.” (Doc. 80 at 1.) Zamarron does not cite a legal basis for this request. Regardless, as the Court will grant Zamarron leave to file an amended complaint, this motion will be denied.

In the Motion to Amend Claims, Zamarron apparently agrees with the PFRD’s conclusion that “the claims against Defendant Herman Madrid were not properly stated” and outlines several facts regarding Madrid’s knowledge and state of mind. (*See* Doc. 79 at 1.) Defendants ask the Court to deny the motion, as Zamarron fails to attach a proposed amended complaint contrary to D.N.M. Local Rule 15.1. (*See* Doc. 82 at 2 (citing D.N.M. LR-Civ. 15.1).) The Court agrees that Zamarron’s motion was deficient and will deny it with leave to refile together with the proposed amended complaint. In his proposed amended complaint, Zamarron may only assert claims against Defendants Chacon and Madrid for violations of his Eighth Amendment right to reasonable protection from violence as outlined in the PFRD. (*See* Doc. 78 at 11–15.)

The Court notes that the PFRD warned Zamarron to comply with the relevant rules. (*See, e.g.,* Doc. 78 at 4 n.4, 37 n.19.) Nor is this the first time the Court has denied Zamarron’s request to amend on the basis that he failed to attach a copy of the proposed amended complaint as required by the Local Rules. (*See* Doc. 68 at 2.) Zamarron must take care to read and comply with the relevant rules. Moreover, Zamarron should carefully draft his third amended complaint, as this will be the last amendment the Court will allow.

**IT IS THEREFORE ORDERED** that the PFRD (Doc. 78) is **ADOPTED**;

**IT IS FURTHER ORDERED** that Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint (Doc. 75) is **GRANTED IN PART** as follows:

(1) The Court **DENIES** the motion with respect to the claim asserted against Chacon for failure to protect Zamarron from violence at the hands of other inmates. Zamarron may reassert this claim in his proposed amended complaint;


(2) The Court **GRANTS** the motion and **DISMISSES WITHOUT PREJUDICE** the claim against Madrid for failure to protect Zamarron from violence at the hands of other inmates. Zamarron may reassert this claim in his proposed amended complaint;

(3) The Court **DISMISSES WITH PREJUDICE** all remaining claims *without* leave to amend. Zamarron shall not include any of these dismissed claims in his proposed amended complaint.

**IT IS FURTHER ORDERED** that Zamarron's Motion to Amend Claims Against Defendant(s) Madrid (Doc. 79) is **DENIED WITHOUT PREJUDICE**. The Court will allow Zamarron leave to file one final motion to amend, taking care to attach the proposed third amended complaint, no later than **July 25, 2025**. Defendants shall file an appropriate response to the amended complaint no later than 14 days after it is filed;

**IT IS FURTHER ORDERED** that Zamarron's Motion to Answer Prayer Relief (Doc. 80) is **DENIED**.

**IT IS SO ORDERED.**

  
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ROBERT C. BRACK  
SENIOR U.S. DISTRICT JUDGE